IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO.5381 OF 1996

Shri. M.D. Vichare, Gandhi Nagar, House No.827, Shiv Colony at Airoli, P.O. Ghansoli, Thane. ..Petitioner.

V/s.

1. The Associated Cement Companies Ltd., Commercial Division Catalysts & Adsorbents Plant, Shastri Marg, Thane - 400 601.
2. Shri P. J. Shah, Presiding Officer, Third Labour Court, Thane.
3. Shri J. P. Limaye, Member Industrial Court, Thane. ..Respondents.

None for petitioner.

Mr.B.G.Vaidya for respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 21ST MARCH, 2006.

ORAL JUDGMENT

1. When this matter was called out, nobody was present on behalf of the petitioner. Heard the learned counsel for the respondent No.1.

2. Perused petition with the assistance of the learned counsel appearing for the respondent No.1. This petition filed under Article 226 & 227 of the Constitution of India is directed against the order

passed by the Labour Court as well as the Industrial Court, Thane.

3. The factual matrix reveals that the challenge is to the action of retrenchment of the complainant who was working as a watchman with the respondent company. The basic challenge to the action of retrenchment appears to be the dispute with respect to the seniority determined by the respondent-employer coupled with non compliance of the provisions of Chapter V-B of the Industrial Disputes Act. From the impugned order of the Industrial Court, it appears that the substantive arguments also centred around seniority and non compliance of the provisions of the Chapter V-B of the Industrial Disputes Act which the Industrial Court has dealt with in the following words:-

> " ...Though there was no pleading in the main complaint till then learned Labour Court has discussed the said issue in detail and come to the conclusion of provisions of Chapter V-B are not applicable. While discussing the said issue he has clearly discussed the applicability of the said amendment when it come into execution and as per the Act of 46/82 was brought into force w.e.f. 21.8.84 by the Govt. of India by its Notification dated 21.8.84. Hence, non-compliance of S-25N of the I.D. Act does not arise. As the retrenchment is effected on and from 16.1.84 so the said retrenchment is legal and proper."

4. So far as the challenge in respect of seniority is concerned, the Industrial Court has

observed as under :-

> " As the seniority list which was published in the establishment as per the procedure and no grievance was raised at that juncture. Even otherwise there arrived a settlement between the recognised Union and the Respondent company and in the settlement there was a clause regarding driving allowance to be paid to the Watchman who are entrusted the driving work whenever there is exigency. This issue is also discussed in detail."

5. The Industrial Court has also taken into account the detailed findings recorded by the Labour Court and discussed Law as well as factual aspects involved in the case. From the submissions made, it appears that one of the contention sought to be raised in the petition is based on the Judgment of **S.G. Chemicals Employees Union V/s. S.G. Chemicals [1986 ILLJ 490]**. The contention is that strength of the workers working in all the Industrial Units of the respondents ought to have taken into account while determining the dispute under the Industrial Dispute Act. No pleadings in this behalf raising this contention are to be found on record. It appears that for the first time this question is being raised in this petition before this Court. The contention at this stage cannot be permitted.

6. In the above view of matter, petition being devoid of any merit is dismissed. Rule stands discharged with no order as to costs.

****